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Friday, July 24, 1987

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

RAYMOND ROY HICKMAN,

No. 1-86-01980

[Debtor](#) .

_____ /

RAYMOND ROY HICKMAN,

[Plaintiff](#) ,

v.



A.P. No. 1-87-0021

PATRICIA HICKMAN,

[Defendant](#) .

_____ /

Memorandum of Decision

Plaintiff Raymond Hickman is the former husband of defendant Patricia Hickman. Raymond filed his [Chapter 7](#)  petition on December 16, 1986. He commenced this [adversary proceeding](#)  when Patricia sought to enforce provisions of their marital settlement

decree in state court. Raymond contends that part of the obligation sought to be enforced was a discharged property settlement obligation. This court enjoined Patricia from proceeding in state court pending this court's ruling, and heard the matter as expeditiously as possible.

Raymond is a real estate broker of modest income. He was unrepresented in the dissolution proceedings because, he says, Patricia's family threatened to institute proceedings which would jeopardize his broker's license unless he did as they directed. At any rate, in return for Patricia's waiver of any rights against his real estate brokerage, which had little apparent value, Raymond agreed to give Patricia most of the community property including the family residence and to pay her spousal support of \$833.00 per month, and child support of \$667.00 per month. In addition, Raymond agreed to make the payments on a note secured by a second deed of trust to the former marital residence in the amount of \$333.00 per month. It is only this monthly note payment which is in dispute here. Regardless of how the marital decree characterizes the note payments, it is the responsibility of this court to apply federal standards to determine if a payment denominated as support is actually in the nature of a property settlement obligation. Shaver v. Shaver (9th Cir.1984) 736 F.2d 1314, 1317. The matter is left to the sound discretion of this court. Stout v. Prussel (8th Cir.1983) 703 F.2d 1055, 1057-58. The court does not feel the need for a detailed analysis of the note obligation, as all factors save one clearly indicate that the note payment obligation is in the nature of support. Since the property division was skewed in favor of Patricia to begin with, it is impossible for Raymond to show that the payment was intended to equalize shares of the marital property. Further, the facts that Patricia had little income and no marketable skill and a minor child under her care are indicia that the note payments are to be considered support under the guidelines set forth in Shaver v. Shaver. Also, the fact that Patricia waived spousal support after the note was paid off is very relevant. Contrary to Raymond's argument, this factor makes the obligation look more like support, not less. See, e.g., In re Anderson (Bkrtcy.S.D.Cal.1982) 21 B.R. 335, 339. The sole troublesome factor in this case is that the debtor's total monthly obligation under the marital decree is \$1833.00, a figure far in excess of the debtor's apparent ability to pay and in fact approaching the total of his income. The debtor argues that he is in a Catch-22 situation where the state court will treat the note payment obligation as a non-modifiable property settlement obligation and decline to give him relief, while this court will treat the same obligation as support and decline to [discharge](#) it. However, this court has the power to fashion a fair and full remedy to avoid this bind. In re Ploski (Bkrtcy.D.N.H.1984) 44 B.R. 911, 914. Accordingly, this court will enter a judgment that the debtor's obligation to make the Mickalek note payments is in the nature of support, and therefore nondischargeable. However, this court will retain jurisdiction to review and reconsider this decision if Patricia argues in any manner before the state court that the obligation to make the Mickalek note payments is not a modifiable support obligation or should not be included in a determination of Raymond's overall support obligations, or if the state court so finds. All stays are hereby lifted in order to allow both parties to proceed in state court in accordance with this decision. However, Patricia shall not seek sanctions against Raymond for any failure to make the Mickalek payments between December 16, 1986, and the date set forth below. This memorandum shall constitute findings and conclusions pursuant to Bankruptcy Rule 7052 and FRCP 52(a). Counsel for Raymond shall prepare and submit an appropriate form of judgment.

Dated: July 24, 1987

ALAN JAROSLOVSKY

U.S. [BANKRUPTCY JUDGE](#) 

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